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July 9, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 17, 2006

Case Number: TSO-0454

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

The individual has held a DOE security clearance for several years while employed by a DOE contractor. During a routine background investigation, the individual revealed on a security form in 2004 that she had undergone alcohol-related treatment from September 2003 until February 2004. In July 2006, the LSO conducted a Personnel Security Interview (PSI) with the individual to explore, among other things, the extent of the individual's alcohol use. Unable to resolve the derogatory information surrounding the individual's excessive alcohol use, the LSO initiated formal administrative review proceedings in October 2006. In a Notification Letter that it sent to the individual, the LSO described the derogatory information that created substantial doubt regarding her continued eligibility to hold a security clearance and explained how that information fell within the purview of one potentially disqualifying criterion which is set forth in the security regulations at 10 C.F.R. § 710.8, subsection j (Criterion J).²

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

² Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8 (j).

Upon her receipt of the Notification Letter, the individual, through her attorney, exercised her right under the Part 710 regulations and requested an administrative review hearing. On November 28, 2006, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case and I subsequently convened a hearing.

At the hearing, six witnesses testified. The individual presented her own testimony and that of five other witnesses; the LSO presented no witnesses. In addition to the testimonial evidence, the LSO submitted 11 exhibits into the record; the individual tendered 14 exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

The LSO contends that the individual has used alcohol habitually to excess in the past. To reach this conclusion, the LSO relies principally on the individual's own statements about the nature and extent of her alcohol use, and the effect that alcohol has had on her social and occupational functioning. Specifically, the individual told the personnel security specialist in July 2006 that she is alcohol dependent and that her friend had expressed concern that she was drinking too much. She also related that in 2003 alcohol was controlling her, and was affecting her attitude and attendance at work. Moreover, she informed the personnel security specialist that in her early 40s, she was becoming intoxicated once a week and that by age 44, she was becoming intoxicated daily. She also told the LSO in July 2006 that she was currently consuming alcohol.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Criterion J. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. See Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House.

IV. Findings of Fact

By the individual's own account, she did not consume alcohol to excess until 2003. Transcript of Hearing (Tr.) at 142. It was in 2003 that she began to drink every evening at home. *Id.* at 145. At first, the individual stated that she drank to intoxication once per week in 2003. Ex. 3 at 18.³ Eventually, she was becoming intoxicated every night. *Id.* at 19. At some point in 2003, the individual realized that her attitude toward work was poor and that her "attendance record was abysmal" so she approached her supervisor, told him that she had an alcohol problem and sought his assistance. Ex. 3 at 27, Tr. at 18. The supervisor referred the individual to the Employee Assistance Program (EAP) at their place of employment. Tr. at 21.

In October 2003, the individual consulted with the EAP about her alcohol issues and then signed a two-year contract with the EAP for monthly counseling sessions. *Id.* at 163, Ex. D. According to the individual, the EAP encouraged her to consult with her health care provider and to locate an alcohol-treatment program. Tr. at 163. To this end, the individual entered an early recovery program through her health care provider. Ex. 9; Tr. at 163. According to information furnished during the individual's background investigation to the Office of Personnel Management (OPM) by the early recovery treatment center psychologist, the individual entered the treatment program on October 20, 2003, and was diagnosed as suffering from Alcohol Dependence. Ex. 10 at 4. The individual did not complete the program, however, and her last recorded visit to the treatment program was February 5, 2004. *Id.* The individual claimed at the hearing that

³ According to the individual, it usually took three drinks for her to feel intoxicated. Ex. 3 at 16.

she spent three weeks in the treatment center's outpatient program and then attended group meetings three times a week. Tr. at 158. She also claimed that she abstained completely from alcohol while she was receiving treatment. Tr. at 164. The individual admitted that she did not complete the early recovery program, explaining that she moved to another city. *Id.* at 155; Ex. 9 at 3. After discontinuing her treatment program, the individual started attending Alcoholic Anonymous (AA) "a couple" of times per week and reading "self-help" materials. Tr. at 158; Ex. 9 at 4. Within a month, she resumed drinking in March 2004 on a "sporadic basis." Tr. at 165. She claimed at the hearing that she began consuming one alcoholic beverage one time per week, and then cut back to one drink once per month. *Id.* at 164. She maintained that she was last intoxicated sometime in 2005. Ex. 9 at 5; Tr. at 177. She also claimed at the hearing that she has not consumed alcohol since June 2006. Tr. at 166. This information is discrepant with the information provided in the July 2006 PSI, however, where the individual told the personnel security specialist that she was currently consuming alcohol. Ex. 3 at 13. Finally, the individual claimed at the hearing that she is attending AA, although she did not provide any documentation to support this assertion nor does she have a sponsor. Tr. at 158. As for her future intentions with regard to AA, she advised that she is uncertain whether she will continue to attend AA meetings. *Id.* at 190.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).⁴ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Individual Habitually Used Alcohol to Excess in the Past

The individual does not dispute that she habitually consumed alcohol to excess in 2003. In fact, she testified at the hearing that she considers herself to be an alcoholic. Tr. at 180. Under these circumstances, the pivotal question in this case is whether the individual has presented convincing evidence that she is adequately rehabilitated or reformed from her past habitual use of alcohol to excess.

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

B. Rehabilitation or Reformation from Habitual Use of Alcohol to Excess

1. The Individual's Testimony

At the hearing, the individual testified that a confluence of stressors in her life in 2003 lead her to a period of excessive alcohol consumption. She explained that she and her daughter began to share a house with one of her friends and her friend's four children. Tr. at 143. She then described the difficulty that she experienced in 2003 as she and her friend tried to "mesh" two families together. *Id.* at 142. In addition, the individual's longer commute to work meant that she had to entrust her daughter's care to her friend who had different views on discipline than she did. *Id.* at 143. Around the same time, the individual got a new supervisor at work. *Id.* She characterized her situation at this time as "a midlife crisis." *Id.* To cope with these stressors, the individual started consuming alcohol every night. *Id.* at 149. Eventually, she was becoming intoxicated every night. Ex. 3 at 19. At the hearing, she defined intoxication as slurred speech, poor coordination and impaired judgment. Tr. at 148-149. The individual's roommate eventually commented on the individual's drinking habits in the fall of 2003 and shortly thereafter, the individual moved to live with her sister. In October 2003, the individual enrolled in the EAP and the outpatient treatment program with her health care provider. She also began to attend AA a couple times per week at this time and maintained that she went to AA for approximately one year. During the six to seven months that she lived with her sister, the individual did not consume any alcohol. *Id.* at 153. When she moved from her sister's house, the individual left her alcohol treatment program. Within one month (March 2004), she resumed drinking "sporadically." *Id.* at 165. The individual testified that she started drinking one drink once per week in March 2004, and eventually cut back to one drink, once per month. *Id.* She admitted to being intoxicated in March 2005. *Id.* at 195. She testified that she has not consumed any alcohol since June 2006. *Id.* at 166.

As for how the individual intends to remain sober, she testified that she stays in contact with her family, she takes her daughter or someone else to the grocery store so she will not buy alcohol, and she reminds herself of the consequences that flowed from her problematic drinking in the past. *Id.*

She claimed at the hearing that she completed the two-year contract with EAP and that her attendance in the alcohol treatment program with her health provider program was not an integral part of the EAP program. *Id.* at 189. With regard to the individual's future intentions regarding AA, she stated, "I don't know if I will or I won't [go.] I get more support from my family and the people around me." *Id.* at 190.

2. The Supervisor's Testimony

The supervisor testified he has supervised the individual for more than three years and finds her to be a very productive and trustworthy employee. *Id.* at 15. He confirmed that he referred the individual to the EAP after she approached him and sought assistance

from her alcohol problem. *Id.* at 18. He related that she told him in 2003 that she wished to “change her lifestyle and modify her behavior.” *Id.*

3. The Best Friend and Former House-Mate

The best friend and former house mate has known the individual for eight years. *Id.* at 50. They shared a house from May 2000 until the fall of 2003. *Id.* at 69. During the time that they lived together, the friend noticed that the individual was consuming alcohol after work in their home. *Id.* at 59. She expressed her concern to the individual about the individual’s drinking habits. *Id.* Sometime thereafter, the individual attended AA and the friend accompanied the individual to a couple of meetings for moral support. *Id.* at 57. Then, the individual moved to live in with her sister. The friend has not seen the individual consume alcohol in one year and believes that the individual is attending AA a couple of times per week. *Id.* at 65-66.

4. Former Co-worker

A former co-worker testified by telephone at the hearing that she still socializes with the individual. *Id.* at 176. She related that she has never seen the individual consume alcohol to excess and was very surprised to learn that the individual had a drinking problem *Id.* at 126-127. She stated that she has only seen the individual consume one to two beers after a softball game. *Id.* at 131. She testified that she was aware that the individual had sought assistance for her drinking in 2003-2004 and 2004-2005. *Id.* at 134.

5. Hearing Officer Evaluation of Evidence

This is a very difficult case to resolve because the Part 710 regulations do not define what constitutes rehabilitation or reformation from excessive, habitual alcohol use in the past.⁵

⁵ For guidance on this matter, I turned to the “Adjudicative Guidelines for Determining Eligibility to Classified Information,” issued in 2005 by the White House. As examples of how a person might mitigate the security concerns associated with excessive alcohol consumption, the Adjudicative Guidelines list the following considerations:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the individual acknowledges this or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);
- (c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;
- (d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

See Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guideline G).

After carefully evaluating the evidence in this case, I first find that it augurs in the individual's favor that she has acknowledged her problematic drinking and was forthright with the DOE on her security form about the nature and extent of her alcohol issues.⁶ However, there are several negative factors that cumulatively outweigh the positive factors in this case.

As an initial matter, the individual did not present probative evidence to convince me that she is making satisfactory progress in addressing her alcohol issues. The only evidence from the individual's psychologist at her alcohol treatment center was obtained through the OPM background investigation. Ex. 9. The psychologist told the OPM investigator that the individual's attendance in the early recovery program was "not regular so she did not graduate from the program." *Id.* The psychologist stated that he had diagnosed the individual as suffering from Alcohol Dependence, but would not provide a prognosis for her recovery. *Id.* The information in the record from the individual's EAP Counselor comes from two sources, the OPM background investigation and a post-hearing submission that I requested in an effort to corroborate the individual's statement that she had completed the terms of her two-year EAP Agreement. The information from the OPM background investigation reflects that the EAP psychologist did not provide either a diagnosis or prognosis for the individual. In her post-hearing submission, the EAP psychologist did not state, as I had expected, that the individual had successfully completed the terms of her two-year EAP Agreement. Instead, she related the date that the individual entered the EAP program and advised that she had seen the individual five times in a six-month period. Ex. N.

I am troubled that the individual elected not to call her EAP counselor as a witness. The individual had initially requested that I issue a subpoena to secure her psychologist's testimony and then withdrew the request prior to the hearing. Had the EAP Counselor testified at the hearing, she could have responded to questions about: (1) the EAP program and the terms of the two-year EAP contract that the individual had signed; (2) what psychological tests, if any, the EAP personnel administered to the individual to detect the nature of the individual's alcohol problem; (3) why the EAP had recommended that the individual enroll in an alcohol treatment program as an adjunct to the EAP program; (4) whether the alcohol treatment program was an integral component of the individual's recovery (which the individual claims it was not); (5) whether the EAP

⁶ The individual contends that the DOE would never have known about her problematic drinking had she not divulged her alcohol counseling on her security form. The individual is mistaken on this matter. The OPM background investigation had independently uncovered information from the individual's supervisor about her alcohol issues.

records confirm that the individual was seen 24 times⁷ by EAP counselors to fulfill her two-year monthly counseling commitment; (6) whether anyone affiliated with the EAP had provided a diagnosis of the individual; and (7) whether it was permissible for the individual to be consuming alcohol during the two-year period that she was enrolled in the EAP. These outstanding questions are ones that, if answered, might have assisted me in making a predictive assessment whether the individual will return to problematic drinking in the future.

I am also not convinced what effect, if any, AA has had on the individual's rehabilitative efforts. By her own account, she has participated in AA for almost one year, although she has no sponsor and could not provide any documentation to prove her attendance. She also provided no testimony about what AA step she is working on or, for that matter, any details about what she is learning from that support system. When questioned at the hearing about her future intentions with regard to AA, the individual expressed ambivalence about continuing with AA. In sum, she did not provide testimonial evidence⁸ to convince me that she regularly attended AA or gained any insight into her alcohol problems through that organization.

Finally, I considered whether the individual's alleged sobriety for almost 10 months as of the date of the hearing is alone sufficient to prove reformation in this case.⁹ I find that it is not. First, it is not clear to me how long the individual has abstained from alcohol. She testified at the hearing that she last consumed alcohol in June 2006. However, during the personnel security interview in July 2006, she admitted that she was still consuming alcohol. This unresolved discrepancy casts doubt on the individual's veracity with regard to her abstinence. Second, even if the individual has abstained for a period of nine or ten months, I am not convinced that she will continue to abstain from alcohol. The record reflects that the individual abstained for six to seven months before resuming her drinking. The individual did not provide any compelling testimony why she is better equipped to continue her abstinence now than in 2004 when she returned to drinking after outpatient treatment.

In the end, I am called upon to determine whether the individual's past, habitual consumption of alcohol to excess is likely to recur in the future. For all the reasons enumerated above, I find that the individual has not presented compelling evidence that allows me to conclude that she is reformed from her past problems with alcohol or to

⁷ In a post-hearing submission, the individual stated that she saw one EAP Counselor six times and the other five times. Ex. M. Meeting 11 times with an EAP Counselor does not, on its face, fulfill the two-year commitment of meeting monthly with an EAP Counselor.

⁸ She did provide a written statement from her mother who related that the individual has attended AA meetings. However, I only accorded this witness statement neutral weight because the mother did not testify under oath and was not subject to cross examination.

⁹ In view of the diagnosis of Alcohol Dependence in the record, any rehabilitation or reformation must be marked from the time the individual stopped drinking. Under the Adjudicative Guidelines, a person who has been diagnosed with Alcohol Dependence must demonstrate abstinence from alcohol, not responsible use of alcohol.

make a predictive assessment that she will not return to consuming alcohol habitually to excess in the future.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: July 9, 2007